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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
11

12 **IN RE GOOGLE PLAY STORE**
13 **ANTITRUST LITIGATION**

14 THIS DOCUMENT RELATES TO:

15 *Epic Games, Inc. v. Google LLC et al.*,
16 Case No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**NON-PARTY SONY ELECTRONICS
INC.'S MOTION TO SEAL HIGHLY
CONFIDENTIAL INFORMATION**

Honorable James Donato

1 Non-Party Sony Electronics Inc. (“Sony”) respectfully moves under Civil Local Rule 79-
2 5 and Court Order, Dkt. 727, to seal portions of Trial Exhibits 7089 and 7090 to prevent
3 disclosure of Sony’s confidential information.

4 During the course of the recent trial, the Parties provided notice to Sony that one of the
5 Parties intended to introduce two trial exhibits, Trial Exhibits 7089 and 7090, that contained
6 Sony-confidential information. After meeting and conferring, Sony and the Parties agreed that
7 the specific data in these two exhibits that relate to Sony was not essential to the presentation of
8 either side’s case and would not be shown or disclosed in open court. Sony understands that
9 these Trial Exhibits were admitted but that the Sony data remains under seal pending the Court’s
10 resolution of the Parties’ Joint Administrative Motion to Consider Whether Another Party’s
11 Material Should Be Sealed Pursuant To Civil Local Rule 79-5 (ECF 889) (the “Parties’
12 Motion”). Sony submits this motion and the accompanying Declaration of David Jacobs in
13 support of the Parties’ Motion as it relates to Sony’ confidential information because public
14 disclosure of this information would cause serious competitive harm to Sony.

15 Sony seeks to seal one row of data in each of Trial Exhibits 7089 and 7090, as described
16 in the Parties’ Motion on page 3. These two rows purport to show the following confidential
17 business information: (1) the number of active Sony devices that are covered by certain contract
18 terms that Sony has negotiated with Google; (2) the number of active Sony devices not covered
19 by these contract terms; (3) the total number of active devices; and (4) the percentage of devices
20 covered by these contract terms. Exhibit 7089 purports to show this data on a world-wide basis
21 (excluding China). Exhibit 7090 purports to show this data for the United States. Further, these
22 documents compromise information that has been designated as “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY” under Protective Order, Dkt. 248.

24 While Sony recognizes the strong public interest in access to trial exhibits and judicial
25 records, the sealing of judicial records is appropriate when “compelling reasons” overcome that
26 presumption. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir.
27 2006). Courts routinely seal documents that contain confidential business and financial
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1 information. *See, e.g., Day v. GEICO Cas. Co.*, No. 21-cv-02103-BLF, 2022 WL 6584451, at *2
2 (N.D. Cal. Sept. 28, 2022) (finding compelling reasons to seal non-public and confidential
3 financial information about the defendant); *Monk v. N. Coast Brewing Co. Inc.*, No. 17-CV-
4 05015-HSG, 2018 WL 6069942 (N.D. Cal. Nov. 20, 2018) (finding compelling reasons to seal
5 financial information of non-party). Further, the interests of Non-Parties in confidential
6 information remaining confidential are particularly strong. *See In re Adobe Systems, Inc. Sec.*
7 *Litigation*, 141 F.R.D. 155, 161-162 (N.D. Cal. 1992). And while not dispositive, courts “also
8 consider a more lenient approach when sealing non-party information.” *DeMartini v. Microsoft*
9 *Corp.*, No. 22-CV-08991-JSC, 2023 WL 4205770, at *2 (N.D. Cal. June 26, 2023).

10 Sony therefore requests that the Court seal one row each in Trial Exhibits 7089 and 7090
11 to prevent disclosure of Sony’s confidential information. Sony is not a party to these
12 proceedings, and as described in the accompanying declaration of David Jacobs (“Jacobs
13 Declaration”), compelling reasons exist to seal this information. Specifically, these Trial
14 Exhibits disclose Sony’s competitively sensitive and non-public information relating to the
15 number of active devices that are subject to the negotiated contract terms, the number of those
16 that are not, the total number of active users, and the percentages covered by certain contract
17 terms. (Jacobs Declaration ¶ 4). Sony keeps this kind of information highly confidential and
18 does not disclose it publicly. (*Id.* ¶ 5). Sony would suffer significant competitive harm if
19 information were to become public and thus disclosed to its competitors and to other firms that
20 contract with Sony. (*Id.*). Public disclosure of information in this exhibit has the potential to
21 cause severe harm to Sony because competitors could use the information to glean insights into
22 Sony’s business. (*Id.*). Disclosure of this information could also cause Sony competitive harm
23 in its dealings with potential contracting partners, such as app developers, who could use it to
24 Sony’s detriment in contract negotiations. (*Id.*). This is of particular concern to Sony in that its
25 market position in the sale of mobile phones in the United States is much smaller than certain of
26 its major competitors, and thus disclosure of confidential information poses a greater risk of
27 competitive harm. (*Id.*). As a result of its size, disclosure of its commercially sensitive
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information puts Sony at much a greater risk of competitive harm than its larger competitors. (*Id.*).

The specific information Sony seeks to seal is below:

<i>Exhibit</i>	<i>Information Sought to Be Sealed</i>	<i>Explanation</i>
Exhibit 7089	Row containing data on numbers of active devices subject to certain contract terms and related metrics	Disclosure to competitors and contracting partners would harm Sony's competitive position
Exhibit 7090	Row containing data on numbers of active devices subject to certain contract terms and related metrics	Disclosure to competitors and contracting partners would harm Sony's competitive position

Here, the risk of competitive harm to Sony merits the sealing of Sony's confidential information and outweighs any concerns about access to judicial records. *E.g., Century Aluminum Co. v. AGCS Marine Ins. Co.*, No. 11-CV-02514-YGR, 2012 WL 13042825, at *2 (N.D. Cal. Aug. 10, 2012) (sealing confidential information because "competitive harm may result" from public disclosure that would "reveal confidential business information and strategies"); *Koninklijke Philips N.V. v. Elec-Tech Int'l Co.*, No. 14-CV-02737-BLF, 2015 WL 581574, at *2–3 (N.D. Cal. Feb. 10, 2015) (sealing confidential business information that could be used by competitors); *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1228 (Fed. Cir. 2013) (finding disclosure of information that "competitors could not obtain anywhere else" might result in competitive harm and should be sealed); *XIFIN, Inc. v. Firefly Diagnostics, Inc.*, No. 317CV00742BENKSC, 2018 WL 1244781, at *2 (S.D. Cal. Mar. 9, 2018) (sealing "commercially sensitive business information" reflected in a contract, including "proprietary protocols and processes"). The potential of harm to Sony's business is more than just theoretical. Given the high profile of this matter and its related cases, Sony expects that the trial exhibits will be monitored by employees and representatives of many other Sony competitors in the mobile phone industry.

We respectfully request that the Court seal the above-described portions of Trial Exhibits 7089 and 7090 in order to prevent any harm to Sony's business in the mobile phone industry.

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2 Dated December 28, 2023

/s/ John F. Cove, Jr.

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